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ABSTRACT

This publication presents an assessment of the U.S. Supreme Court's ruling in Board of Trustees of the University of Alabama v. Garrett (2001), which decided that Congress had no power to authorize suits for damages by individuals with disabilities against state employers under Title I of the Americans with Disabilities Act (ADA). The publication reveals the decisions leading to Garrett, examines the court's reasoning behind the decision, offers the dissenting view, and explores the ruling's implications for public education. A glossary of legal terms is also provided. (GR)

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The Garrett Case and Public School Accessibility

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• National Clearinghouse for Educational Facilities

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A case recently decided by the United States Supreme Court, *Board of Trustees of the University of Alabama v. Garrett* (2001), has left public education's legal obligations to children with disabilities intact. Because the Court continues to address issues that could affect nearly six million school children with disabilities, however, officials and planners responsible for program and facilities accessibility should become acquainted with the *Garrett* case.

The Supreme Court decided in *Garrett* that Congress had no power to authorize suits for damages by individuals with disabilities against state employers under Title I of the Americans with Disabilities Act (ADA). The Court's decision left many within the educational community wondering whether the established rights of children and youth with disabilities in public schools could be jeopardized. Although *Garrett* has created uncertainty about the rights of disabled individuals with respect to state-operated educational entities, *Garrett* is unlikely to interfere with the rights of students with disabilities in locally controlled public schools.

Public schools must continue to comply with all federal mandates that ensure the rights of children with disabilities. These include the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Individuals with Disabilities Education Act (IDEA). Schools must continue to provide disabled children with a "free and appropriate public education" in the "most integrated setting" possible. Schools must offer "reasonable accommodations," and their programs and facilities need to be "readily accessible to and usable by" individuals with disabilities. And, school facilities must continue to be constructed or renovated in conformity with the Uniform Federal Accessibility Standards (UFAS) or the ADA Standards for Accessible Design.

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The Garrett Case

In *Garrett*, the merits of the plaintiffs' claims under the ADA were not at issue before the Supreme Court. Instead, the arguments that the Court considered involved the scope of Congress's authority to use its Fourteenth Amendment enforcement power to abrogate (i.e., abolish by legal authority) States' Eleventh Amendment sovereign immunity. (See the text of the Eleventh and Fourteenth Amendments on page 5.)

The case evolved from federal employment discrimination suits filed in 1997 by two Alabama state employees with physical disabilities—Patricia Garrett, a nurse administrator with breast cancer, and Milton Ash, a correctional officer with severe asthma. Garrett's employer had demoted her following her treatment for cancer, and Ash's employer had refused to make reasonable accommodations for his asthma. These two private suits sought money damages and injunctive relief (i.e., a court order to comply with the law) from Alabama under Titles I and II of the ADA. (Title I prohibits employment discrimination on the basis of disability. Title II prohibits discrimination by public entities on the basis of disability and requires public entities to provide reasonable accommodations for persons with disabilities.)

Alabama argued that it was protected from liability in private suits for money damages brought under the ADA by the Eleventh Amendment's grant of sovereign immunity to the States. The plaintiffs countered that Congress, in enacting the ADA, validly exercised its constitutional authority under Section 5 of the Fourteenth Amendment to abrogate States' Eleventh Amendment immunity.

The U.S. District Court, which consolidated the cases as *Garrett*, agreed with Alabama's argument and dismissed the plaintiffs' claims. The U.S. Court of Appeals for the Eleventh Circuit agreed with the plaintiffs and reversed the lower court's decision. The Supreme Court then reversed the Court of Appeals, upholding Alabama's defense: "Suits in federal court by state employees to recover money damages by reason of the State's failure to comply with Title I of the ADA are barred by the Eleventh Amendment."

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Although the *Garrett* decision prohibits private suits for money damages under Title I, it does not prohibit private suits for prospective injunctive relief against state officials under the doctrine of *Ex Parte Young* (1908). Further, the *Garrett* decision does not prohibit Title I suits for money damages (usually back pay) or injunctive relief brought by the federal government on behalf of persons with disabilities. Plaintiffs also have recourse to private suits for money damages under Section 504 of the Rehabilitation Act, as well as recourse to state nondiscrimination laws.

Decisions Leading to Garrett

The federal courts have long held that Sections 1 (containing the Equal Protection and Due Process Clauses) and 5 (the Enforcement Clause) of the Fourteenth Amendment give Congress legislative authority to provide protection against intentional discrimination. Specifically, Congress may prohibit actions that—though not necessarily unconstitutional—constitute adverse disparate treatment, and Congress may remedy such actions. The Supreme Court's decision in *Garrett* (proceeding from a series of decisions summarized below) continues to adhere to the principle that Congress may go

Glossary of Legal Terms

Abrogate. To abolish by legal authority.

Appellant. The party appealing a court's decision.

Appellee. The party against whom an appeal of a court's decision has been made.

Claim. Assertion of a legal right or demand for compliance or damages.

Defendant. The party required to answer in a lawsuit.

Denial of Certiorari. Refusal to call up a case from a lower court for review (i.e., "cert. denied"), leaving the lower court's decision in place.

Dismiss. To remove from judicial consideration.

Dissent. A justice's nonconcurrence with a decision of the majority (i.e., dissenting opinion).

Ex Parte Young. A legal doctrine allowing prospective enforcement of federal law, the Eleventh Amendment notwithstanding, by requiring lawful conduct of a public official who is acting in an official capacity.

Money damages. Compensation sought for damage or loss suffered by a plaintiff (often back pay in employment discrimination suits).

Plaintiff. The party commencing a lawsuit.

Prospective injunctive relief. Legal remedy in the form of a court order requiring future compliance with an existing law.

Rational-basis scrutiny. Standard of review requiring that discriminatory government action, in order to be considered constitutional under the Fourteenth Amendment, be only rationally related to a legitimate government interest.

Remedy. Legal means of enforcing or recovering a right or preventing or correcting a wrong.

Reverse. To replace a legal decision with a contrary legal decision.

Sovereign immunity. Constitutional doctrine embodied in the Eleventh Amendment protecting the States (unless the States grant permission) from suits by U.S. or foreign citizens.

Strict scrutiny. Standard of review requiring that discriminatory government action, in order to be considered constitutional under the Fourteenth Amendment, be narrowly tailored to achieve a compelling government interest.

Suspect classification. Characteristic such as race or gender designated for heightened constitutional scrutiny under the Fourteenth Amendment, in order to ensure that laws incorporating such a characteristic afford equal protection (i.e., are nondiscriminatory).

U.S. Circuit Court of Appeals. Any of the 13 regional federal appellate courts that review cases decided in the federal district courts.

U.S. District Court. Any of the regional federal trial courts.

beyond the Constitution in regulating conduct, but the decision makes it extremely difficult for Congress to do so.

In *Seminole Tribe of Florida v. Florida* (1996), the Court devised a two-part test to determine whether Congress, claiming authority under the Constitution's Indian Commerce Clause (i.e., "to regulate commerce ... with the Indian tribes"), validly abrogated States' sovereign immunity in enacting the Indian Gaming Regulation Act (IGRA). The Court asked: (1) whether Congress "unequivocally" expressed its intent to abrogate States' immunity, and (2) whether Congress acted pursuant to a valid exercise of its power. The Court concluded that in enacting the IGRA (at issue in *Seminole*), Congress clearly expressed its intent to abrogate States' sovereign immunity. But the Court also held that Congress could not use its authority under the Indian Commerce Clause for this purpose.

In effect, the *Seminole* case served to reaffirm Congress's Fourteenth Amendment authority to abrogate States' immunity. In subsequent cases, however, the Court began to constrain this authority as well.

In *City of Boerne v. Flores* (1997), the Court devised a two-part test to determine whether Congress, using its authority under the Fourteenth Amendment, properly enacted the Religious Freedom Restoration Act (RFRA). The Court asked: (1) whether the statute was intended to remedy a history of unconstitutional conduct, and (2) whether the remedy contained in the statute was proportionate to the history of constitutional violations. The Court concluded that in enacting the RFRA (at issue in *Boerne*), Congress exceeded its authority under the Fourteenth Amendment: Congress failed to demonstrate a history of unconstitutional conduct, and the remedies contained in the RFRA were disproportionate to the history of constitutional violations.

In *Kimel v. Florida Board of Regents* (2000), the Court applied the two-part tests set down in its *Seminole* and *Boerne* decisions to Congress's enactment of the Age Discrimination in Employment Act (ADEA). On the basis of these tests, the Court concluded that, although Congress made its intent clear, Congress exceeded its authority to abrogate States' sovereign immunity because it failed to identify a history of unconstitutional conduct. (*Kimel* did not address the proportionality issue.)

In *Kimel*, moreover, the Court reaffirmed its position that age, unlike race or gender, is not a "suspect classification" meriting heightened constitutional scrutiny to ensure equal protection under the Fourteenth Amendment. Within the Court's hierarchical scheme for reviewing civil rights legislation, intentional discrimination based on race receives "strict scrutiny" from the Court and is presumed unconstitutional unless narrowly tailored to achieve a compelling government interest. Discrimination based on gender also receives heightened scrutiny, similar in form to that applied to race but employing a slightly different test.

Discrimination based on classifications not designated "suspect" by the Court (such as age discrimination) receives only "rational-basis scrutiny." If such discrimination is shown to be rationally related to a legitimate government interest, it is presumed constitutional. Therefore, in *Kimel*, the Court also held that "States may discriminate on the basis of age without offending the Fourteenth Amendment if the age classification in question is rationally related to a legitimate state interest."

The Reasoning in Garrett

Drawing upon these earlier decisions, the Court's opinion in *Garrett* acknowledges that in enacting the Americans with Disabilities Act, Congress's intent to authorize damage suits against the States was clear. The opinion goes on to assert, however, that Congress exceeded its authority under the Fourteenth Amendment in two respects. First, the ADA's legislative record lacks evidence of a history and pattern of unconstitutional conduct (i.e., irrational employment discrimination against the disabled) by the States. And second, the ADA's remedy (i.e., requiring state employers to accommodate the needs of disabled workers) is disproportionate to the history of constitutional violations.

The Court in *Garrett* holds that disability, like age, is not a suspect classification meriting heightened constitutional scrutiny under the Fourteenth Amendment. Actions based on disability receive only rational-basis scrutiny from the Court. Further, the Court holds that actions based on "negative attitudes [and] fear [that] often accompany irrational biases" are not unconstitutional unless the plaintiff can prove that there is no rational basis that could have motivated the actions.

The Court thus concludes that States are not required to make special accommodations for the disabled as long as the States' actions toward such individuals are "rational." From the Court's perspective, for example, it would be rational and, therefore, constitutional for a

state employer to conserve scarce financial resources by hiring only employees who are able to use existing facilities, even though the ADA requires employers to make such facilities "readily accessible to and usable by" disabled individuals.

The Dissenting View

The Supreme Court's decisions leading to *Garrett* have made it increasingly difficult for Congress to enact civil rights legislation. In *Garrett*, the Court has made it nearly impossible for Congress, under the Fourteenth Amendment, to offer protection against intentional discrimination, unless the discrimination is based on race or gender. The Court brings this about, according to the Dissent, through "its evidentiary demands, its non-deferential review, and its failure to distinguish between judicial and legislative constitutional competencies."

On the matter of evidentiary demands, the Court in *Garrett* characterizes the ADA's legislative record as one "not of legislative findings, but of unexamined, anecdotal accounts." In so doing, the Court is suggesting that in order to legislate, Congress must function in much the same way as a court of law, holding hearings to take extensive evidence on any issue on which it intends to act. The Dissent in *Garrett*, however, takes a different view of Congress's proper evidentiary function: "Unlike courts, Congress can readily gather facts from across the Nation, assess the magnitude of a problem, and more easily find an appropriate remedy." The Dissent also differs in its view of the ADA's legislative history: "Read with a reasonably favorable eye, the record indicates that state governments subjected those with disabilities to seriously adverse, disparate treatment."

The Court's non-deferential review in *Garrett* burdens Congress to apply rational-basis scrutiny when evaluating evidence or making findings during its legislative process. Rational-basis scrutiny is the Court's test for determining whether discriminatory government conduct is constitutional (i.e., rational) and, therefore, not subject to remedy by Congress. The Dissent argues that it is inappropriate to apply rational-basis scrutiny to the evidence and findings supporting Congress's passage of the ADA. Such scrutiny, according to the Dissent, is a tool of judicial restraint intended for use by the lower courts in reviewing legislatures' actions *with deference*. It is not intended for use by Congress in its legislative task. Additionally, the Dissent finds "unjustified" the fact that the *Garrett* opinion lends legitimacy to "negative attitudes [and] fear [that] often accompany irrational biases" in the "rational" exercise of state authority.

Finally, the Dissent contends that the Court fails to distinguish between the respective competencies of the judiciary and the Congress. This occurs not only in the Court's requirements for gathering and reviewing evidence in support of legislation, but also in the Court's confinement of the legislative power to "the insignificant role of abrogating only those state laws that the judicial branch is prepared to adjudge unconstitutional."

Implications for Public Education

What do arcane constitutional arguments involving the employment discrimination lawsuits of a nurse administrator and a correctional officer have to do with access to public school programs and facilities by children with disabilities? Title II of the ADA, which prohibits discrimination on the basis of disability and requires reasonable accommodations by public entities, is the portion of the ADA that most directly affects the accessibility of public schools' array of programs and facilities. The Supreme Court's Title I ruling in *Garrett*, weakening Congress's Fourteenth Amendment authority and strengthening States' Eleventh Amendment immunity, raises questions about how the Court will look at Title II and about whether it will find Title II constitutional.

The plaintiffs in *Garrett* alleged violations under Title II as well as Title I, and the parties to the case discussed both Titles in their arguments before the Supreme Court. The Court, however, demurred on Title II: "We are not disposed to decide the constitutional issue whether Title II ... is appropriate legislation under A5 [Section 5] of the Fourteenth Amendment." The Court has declined to hear a number of recent cases presenting the issue of whether Congress validly abrogated States' sovereign immunity in enacting Title II, leaving the issue open for possible later consideration.

Were other Courts, reasoning from the Title I ruling in *Garrett*, to conclude that individuals could not sue States for damages under Title II, Title II provisions would remain enforceable by other means. These alternatives include private suits for prospective injunctive relief and suits brought by the federal government. Moreover, many of the program and facilities accessibility protections that Title II affords individuals with disabilities are also found in Section 504 and in IDEA. These earlier laws, rooted in Congress's spending authority rather than in the Fourteenth

Amendment, have resisted challenge in the courts and will likely continue to function as originally intended.

It should be emphasized that the Court in *Garrett* also reaffirmed an existing position that States' sovereign immunity does not extend to local governments, such as cities and counties. Consequently, most K–12 public schools, as units of local government, would not be shielded from lawsuits brought under a potentially less robust Title II emanating from *Garrett*. However, the rights of children with disabilities are not invulnerable. The reasoning in *Garrett* could be used to protect state-run "special" schools and any state-operated aspects of K–12 public school systems, as well as state colleges and universities, from certain Title II suits.

Given the ADA's wide public acceptance, broad coverage, and enforcement power, its beneficiaries and advocates find the loss or limitation of any of its elements regrettable. Nonetheless, school officials, facilities planners, and others concerned with helping children to succeed in America's public schools may be reassured. The limited scope of *Garrett* and the alternatives for ADA enforcement should leave accessible programs and facilities in place and, in general, protected.

The Eleventh Amendment (ratified 1798)

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state or by citizens or subjects of any foreign state.

The Fourteenth Amendment, Sections 1 & 5 (ratified 1868)

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

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Additional Information

See the NCEF resource list *Accessibility in Schools* online at http://www.edfacilities.org/rl/accessibility.cfm

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